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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT JAMES,

Defendant and Appellant.

D075414

(Super. Ct. No. CR134538)

APPEAL from an order of the Superior Court of San Diego County, Lorna Alksne, Judge. Affirmed.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 1992, Robert James pleaded guilty to one count of robbery (Pen. Code,¹ § 211, a felony) arising from an act of shoplifting then grew into a physical encounter with store

¹ All further statutory references are to the Penal Code unless otherwise specified.

personnel.² The trial court, pursuant to a plea agreement struck the strike prior (§ 667, subds. (b)-(i)). James was sentenced to the middle term of three years in prison.

In 2017, James filed a petition to reduce the robbery³ conviction to a misdemeanor under Proposition 47 (§ 1170.18). The trial court found robbery was not an offense which was eligible for reduction under section 1170.18 and denied the petition.

In 2018, James filed a second Proposition 47 petition again seeking to have the conviction reduced to a misdemeanor. He essentially argued the offense, as committed, was a shoplifting of an amount less than \$950. The court again denied his petition.

James filed a timely notice of appeal.

Appellate counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*), indicating she has been unable to identify any arguable issue for reversal on appeal. Counsel asks this court to review the record for error as mandated by *Wende*.

We offered James the opportunity to file his own brief on appeal, but he has not responded.

DISCUSSION⁴

As we have noted, appellate counsel has filed a brief pursuant to *Wende, supra*, 25 Cal.3d 436 and has asked us to review the record for error. In order to assist the court in

² The use of force to get away with the merchandize made the theft a robbery under *People v. Estes* (1983) 147 Cal.App.3d 23.

³ Robbery is not a "wobbler" offense which can be punished as either a felony or misdemeanor. Robbery is a felony offense.

its review, and in compliance with *Anders v. California* (1967) 386 U.S. 738 (*Anders*), counsel has identified the following possible issue: Whether the robbery count should be reduced to a misdemeanor pursuant to Proposition 47.

We have examined the entire record pursuant to *Wende* and *Anders*. We have not identified any arguable issue for reversal on appeal. Competent counsel has represented James on this appeal.

DISPOSITION

The trial court's order denying the petition filed pursuant to section 1170.18 is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

GUERRERO, J.

⁴ The facts of the 1992 conviction are not relevant to the issue presented by this appeal. Therefore, we have omitted the traditional statement of facts.